

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN DUNMIRE,

Plaintiff,

v.

CAPT. DEPASQUAL, et al.,

Defendant.

)
)
)
)
)
)
)

Civil Action No. 05-64 Erie

ORDER

AND NOW, this 21st day of October, 2005, the Magistrate Judge having filed a Report and Recommendation [Doc. # 20] on September 23, 2005 in the above-captioned case recommending that the Defendants' motion to dismiss the complaint [Doc. # 15] be granted, and upon consideration of the same as well as the Plaintiff's objections thereto, this Court declines to adopt the September 23, 2005 Report and Recommendation. Specifically, in light of the Plaintiff's representation in his objections to the effect that the state prison officials failed to comply with the SCI-Albion's own grievance procedures, we find, as the record is presently postured, a material issue of fact.

IT IS THEREFORE ORDERED that Defendants' motion to dismiss [Doc. # 15] is DENIED. This order is without prejudice to the Defendants' refiling a motion under Fed. R. Civ. P. 56 on a fully developed record.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record.